



DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-897]

Utility Scale Wind Towers from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that utility scale wind towers (wind towers) from India are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2019, through June 30, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Amaris Wade, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1280 or (202) 482-3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on November 16, 2020.¹ For a complete description of the events that followed the

¹ See *Utility Scale Wind Towers from India, Malaysia, and Spain: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 73023 (November 16, 2020) (*Initiation Notice*).

initiation of this investigation, *see* the Preliminary Decision Memorandum.² A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The products covered by this investigation are utility scale wind towers from India. For a complete description of the scope of this investigation, *see* Appendix I to this notice.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,³ we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage (*i.e.*, scope).⁴ We did not receive comments concerning the scope of the investigation of wind towers as it appeared in the *Initiation Notice*. Therefore, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. *See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to section 776(a) of the Act, Commerce preliminarily relied upon facts otherwise available to assign a dumping margin to Vestas Wind Technology India Private Limited (Vestas India) in this investigation because Vestas India failed to file a complete response to Commerce's supplemental section D questionnaire by the established deadline. As a result, for the reasons discussed in the Preliminary Decision Memorandum, Commerce is unable to rely on

² *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Utility Scale Wind Towers from India," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

³ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁴ *See Initiation Notice*, 85 FR at 73024.

Vestas India's reported cost data to calculate a margin. Commerce also preliminarily relied upon facts otherwise available to assign a dumping margin to the companies which did not provide timely responses to the quantity and value (Q&V) questionnaires during the respondent selection process.⁵ Further, pursuant to section 776(b) of the Act, Commerce is preliminarily determining that Vestas India and the companies which did not provide timely responses to the Q&V questionnaire each failed to cooperate to the best of its ability to comply with Commerce's requests for information. Therefore, Commerce is using an adverse inference when selecting from among the facts otherwise available when determining the preliminary margins assigned to these companies, in accordance with section 776(b) of the Act. For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. Commerce preliminarily determined the estimated weighted-average dumping margin for the individually-examined respondent entirely under section 776 of the Act.

⁵ These non-responsive companies are: Acciona Wind Power India Pvt. Ltd.; Nordex India Pvt. Ltd.; Prommada Hindustan Private Ltd.; Vinayaka Energy Tek; and Zeeco India Pvt. Ltd.

In the Petition, the petitioner⁶ provided only one dumping margin, which was based on a price-to-constructed-value comparison.⁷ Therefore, in the absence of another weighted-average dumping margin on the record of this investigation, we are preliminarily assigning the sole dumping margin in the *Initiation Notice* (i.e., 54.03 percent) as the all-others rate.⁸

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/Producer	Dumping Margin (percent)	Cash Deposit Rate (adjusted for subsidy offsets)⁹ (percent)
Vestas Wind Technology India Private Limited	54.03	50.65
Acciona Wind Power India Pvt. Ltd.	54.03	50.65
Nordex India Pvt. Ltd.	54.03	50.65
Prommada Hindustan Private Ltd.	54.03	50.65
Vinayaka Energy Tek	54.03	50.65
Zeeco India Pvt. Ltd.	54.03	50.65
All Others	54.03	50.65

Suspension of Liquidation

In accordance with section 773(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in

⁶ The petitioner is the Wind Tower Trade Coalition, whose members are Arcosa Wind Towers Inc. and Broadwind Towers, Inc.

⁷ See Petitioner's Letter, "Utility Scale Wind Towers from India, Malaysia and Spain: Petitions for the Imposition of Antidumping and Countervailing Duties," dated September 30, 2020 (Petition); *see also* Antidumping Investigation Initiation Checklist – Utility Scale Wind Towers from India (November 9, 2020).

⁸ *See, e.g., Mattresses from Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 69574 (November 3, 2020), unchanged in *Mattresses from Malaysia: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 15901 (March 25, 2021); and *Refillable Stainless Steel Kegs from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 25738 (June 4, 2019), unchanged in *Refillable Stainless Steel Kegs from Mexico: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 84 FR 42894 (August 19, 2019); *see also* *Initiation Notice*, 85 FR at 73026.

⁹ *See* Memorandum, "Export Subsidies Found in the Companion Countervailing Duty Investigation," dated concurrently with this notice.

Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the *Federal Register*.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, Commerce has made a preliminary affirmative determination for an export subsidy adjustment. Commerce has offset the estimated weighted-average dumping margin by the appropriate rate. Any such adjusted rates may be found in the chart of estimated weighted-average dumping margins in the “Preliminary Determination” section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary determination in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily determined Vestas India’s dumping margin in this investigation based on AFA, in accordance with section 776 of the Act, there are no calculations to disclose.

Verification

Because Vestas India did not act to the best of its ability to provide information Commerce requested and, as a result, we preliminarily determine that Vestas India was uncooperative, we will not conduct verification.

Public Comment

Interested parties are invited to comment on this preliminary determination no later than 30 days after the date of publication of the preliminary determination.¹⁰ Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline for case briefs.¹¹ Commerce has modified certain of its requirements for service of documents containing business proprietary information, until further notice.¹² Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹³

Final Determination

Section 735(a)(1) of the Act and 19 CFR 351.210(b)(1) provide that Commerce will issue the final determination within 75 days after the date of its preliminary determination.

¹⁰ See 19 CFR 351.309(c)(1)(i); *see also* 19 CFR 351.303 (for general filing requirements).

¹¹ See 19 CFR 351.309(d); *see also* 19 CFR 351.303 (for general filing requirements).

¹² See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹³ See 19 CFR 351.310(d).

Accordingly, Commerce will make its final determination no later than 75 days after the signature date of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: May 18, 2021.

Christian Marsh,

Acting Assistant Secretary

for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of the Investigation
- V. Application of Facts Available, Use of Adverse Inferences, Corroboration, and Calculation of All-Others Rate
- VI. MNC and PMS Allegations
- VII. Recommendation

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